

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

NATIONAL STEEL CAR LIMITED,

Plaintiff,

v.

GREENBRIER-CONCARRIL, LLC,
GREENBRIER LEASING COMPANY,
LLC, and GREENBRIER-GIMSA, LLC,

Defendants.

Case No. 3:20-cv-01275-YY

DECLARATION OF BRIAN APEL IN
SUPPORT OF GREENBRIER'S BILL OF
COSTS

I, Brian Apel, declare as follows:

I am an attorney at Banner & Witcoff, Ltd., counsel of record for Defendants Greenbrier-Concarril, LLC, Greenbrier Leasing Company, LLC, and Greenbrier-GIMSA, LLC (collectively "Greenbrier") in the above-referenced litigation. I submit this Declaration in support of Greenbrier's Bill of Costs, including that the below described fees are correct, and were actually and necessarily incurred in this action, and that the services for which such fees were charged were actually and necessarily performed. Unless otherwise indicated, I have personal knowledge of the matters stated in this declaration, and, if called to testify, I would testify as follows.

1. Greenbrier incurred recoverable costs in the amount of **\$89,646.72** to defend this action. This case was a patent case, and patent cases are highly technical and complex relative to most other types of actions in federal court. This patent case involved numerous necessary subpoenas to nonparties, numerous necessary depositions of fact and expert witnesses for both sides, and several necessary depositions of nonparties. Also, this case was pending for over four years and included a transfer to the U.S. District Court for the District of Oregon from the U.S. District Court for the Western District of Texas.

DECLARATION OF BRIAN APEL IN SUPPORT OF GREENBRIER'S BILL OF COSTS

2. Attached hereto as Exhibit 1 is a true and correct copy of an invoice from Kellie M. Humiston, Official Court Reporter, dated March 19, 2021 in the amount of \$1,100.90 for the transcript of the March 15, 2021 *Markman* Hearing.

3. Attached hereto as Exhibit 2 is a true and correct copy of an invoice from Kellie M. Humiston, Official Court Reporter, dated April 13, 2021 in the amount of \$871.25 for the transcript of the March 23, 2021 *Markman* Hearing.

4. Attached hereto as Exhibit 3 is a true and correct copy of an invoice from Dennis Apodaca, Official Court Reporter, dated May 17, 2022 in the amount of \$562.10 for the transcript of the April 26, 2022 Hearing.

5. Attached hereto as Exhibit 4 is a true and correct copy of an invoice from Kellie M. Humiston, Official Court Reporter, dated May 4, 2023 in the amount of \$401.50 for a deposit on the fee for the transcript of the April 25, 2023 Hearing.

6. Attached hereto as Exhibit 5 is a true and correct copy of an invoice from Kellie M. Humiston, Official Court Reporter, dated May 23, 2023 in the amount of \$14.60 for the balance of the fee for the transcript of the April 25, 2023 Hearing.

7. Attached hereto as Exhibit 6 is a true and correct copy of an invoice from Ryan White, Official Court Reporter, dated June 11, 2023 in the amount of \$401.50 for the transcript of the May 3, 2023 Hearing

8. Attached hereto as Exhibit 7 is a true and correct copy of an invoice from Veritext, LLC dated December 9, 2020 in the amount of \$2,344.35 for the transcript and exhibits for the December 3, 2020 deposition of Richard Dawson.

9. Attached hereto as Exhibit 8 is a true and correct copy of an invoice from Veritext, LLC dated June 22, 2020 in the amount of \$1,506.75 for the transcripts for the June 11, 2020 depositions of Justin Roberts and Rick Turner.

10. Attached hereto as Exhibit 9 is a true and correct copy of an invoice from TransPerfect Deposition Services dated March 31, 2022 in the amount of \$2,063.65 for the transcript and exhibits for the March 7, 2022 deposition of Stephen Alan Schmotzer.

11. Attached hereto as Exhibit 10 is a true and correct copy of an invoice from TransPerfect Deposition Services dated March 31, 2022 in the amount of \$2,526.55 for the transcript and exhibits for the March 10, 2022 deposition of Michael Gillis.

12. Attached hereto as Exhibit 11 is a true and correct copy of an invoice from TSG Reporting dated March 25, 2022 in the amount of \$3,293.00 for the transcript and exhibits for the March 14, 2022 deposition of James Wilfred Forbes.

13. Attached hereto as Exhibit 12 is a true and correct copy of an invoice from TSG Reporting dated March 25, 2022 in the amount of \$765.00 for videographer services for the March 14, 2022 deposition of James Wilfred Forbes.

14. Attached hereto as Exhibit 13 is a true and correct copy of an invoice from TSG Reporting dated March 29, 2022 in the amount of \$3,536.30 for the transcript and exhibits for the March 15, 2022 deposition of James Wilfred Forbes.

15. Attached hereto as Exhibit 14 is a true and correct copy of an invoice from TSG Reporting dated March 29, 2022 in the amount of \$820.00 for videographer services for the March 15, 2022 deposition of James Wilfred Forbes.

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16. Attached hereto as Exhibit 15 is a true and correct copy of an invoice from TransPerfect Deposition Services dated March 31, 2022 in the amount of \$2,742.70 for the transcript and exhibits for the March 17, 2022 deposition of Katherine Mills.

17. Attached hereto as Exhibit 16 is a true and correct copy of an invoice from TSG Reporting dated April 8, 2022 in the amount of \$1,563.80 for the transcript and exhibits for the March 29, 2022 deposition of Clayton D. Miller as a 30(b)(6) Designee for nonparty Railinc Corp.

18. Attached hereto as Exhibit 17 is a true and correct copy of an invoice from TSG Reporting dated April 8, 2022 in the amount of \$480.00 for videographer services for the March 29, 2022 deposition of Clayton D. Miller as a 30(b)(6) Designee for nonparty Railinc Corp.

19. Attached hereto as Exhibit 18 is a true and correct copy of an invoice from TSG Reporting dated April 21, 2022 in the amount of \$1,606.37 for the transcript for the April 8, 2022 deposition of Joseph Zammit.

20. Attached hereto as Exhibit 19 is a true and correct copy of an invoice from TSG Reporting dated April 21, 2022 in the amount of \$1,095.00 for videographer services for the April 8, 2022 deposition of Joseph Zammit.

21. Attached hereto as Exhibit 20 is a true and correct copy of an invoice from TransPerfect Deposition Services dated May 12, 2022 in the amount of \$1,859.20 for the transcript and exhibits for the April 18, 2022 deposition of Nicole McKinstry.

22. Attached hereto as Exhibit 21 is a true and correct copy of an invoice from TransPerfect Deposition Services dated May 12, 2022 in the amount of \$2,500.05 for the transcript and exhibits for the April 19, 2022 deposition of Greg Saxton.

23. Attached hereto as Exhibit 22 is a true and correct copy of an invoice from TSG Reporting dated May 5, 2022 in the amount of \$5,034.80 for the transcript and exhibits for the April 20, 2022 deposition of Kenneth Black.

24. Attached hereto as Exhibit 23 is a true and correct copy of an invoice from TSG Reporting dated May 5, 2022 in the amount of \$1,507.50 for videographer services for the April 20, 2022 deposition of Kenneth Black.

25. Attached hereto as Exhibit 24 is a true and correct copy of an invoice from TSG Reporting dated May 4, 2022 in the amount of \$4,453.00 for the transcript and exhibits for the April 22, 2022 deposition of Robert Pickel.

26. Attached hereto as Exhibit 25 is a true and correct copy of an invoice from TSG Reporting dated May 4, 2022 in the amount of \$1,367.50 for videographer services for the April 22, 2022 deposition of Robert Pickel.

27. Attached hereto as Exhibit 26 is a true and correct copy of an invoice from TSG Reporting dated June 22, 2022 in the amount of \$4,894.90 for the transcript and exhibits for the June 7, 2022 deposition of Hugh Nicholson.

28. Attached hereto as Exhibit 27 is a true and correct copy of an invoice from TSG Reporting dated June 22, 2022 in the amount of \$1,535.00 for videographer services for the June 7, 2022 deposition of Hugh Nicholson.

29. Attached hereto as Exhibit 28 is a true and correct copy of an invoice from TSG Reporting dated July 6, 2022 in the amount of \$4,522.70 for the transcript and exhibits for the June 21, 2022 deposition of Vince De Luca.

30. Attached hereto as Exhibit 29 is a true and correct copy of an invoice from TSG Reporting dated July 6, 2022 in the amount of \$1,260.00 for videographer services for the June 21, 2022 deposition of Vince De Luca.

31. Attached hereto as Exhibit 30 is a true and correct copy of an invoice from TSG Reporting dated September 8, 2022 in the amount of \$8,457.90 for the transcript and exhibits for the August 31, 2022 deposition of Carrie Distler.

32. Attached hereto as Exhibit 31 is a true and correct copy of an invoice from TSG Reporting dated September 8, 2022 in the amount of \$1,501.25 for videographer services for the August 31, 2022 deposition of Carrie Distler.

33. Attached hereto as Exhibit 32 is a true and correct copy of an invoice from TSG Reporting dated September 27, 2022 in the amount of \$3,930.90 for the transcript and exhibits for the September 14, 2022 deposition of Ambreen Salters.

34. Attached hereto as Exhibit 33 is a true and correct copy of an invoice from TSG Reporting dated September 27, 2022 in the amount of \$300.00 for the video for the September 14, 2022 deposition of Ambreen Salters.

35. Attached hereto as Exhibit 34 is a true and correct copy of an invoice from TSG Reporting dated October 18, 2022 in the amount of \$8,948.25 for the transcript and exhibits for the September 30, 2022 deposition of Ronald P. Sellberg.

36. Attached hereto as Exhibit 35 is a true and correct copy of an invoice from TSG Reporting dated October 18, 2022 in the amount of \$1,533.75 for videographer services for the September 30, 2022 deposition of Ronald P. Sellberg.

37. Attached hereto as Exhibit 36 is a true and correct copy of an invoice from TSG Reporting dated October 27, 2022 in the amount of \$389.40 for the exhibits for the September 30, 2022 deposition of Ronald P. Sellberg.

38. Attached hereto as Exhibit 37 is a true and correct copy of an invoice from Steno dated October 25, 2022 in the amount of \$1,450.55 for the transcript and video for the October 11, 2022 deposition of Richard Dawson.

39. Attached hereto as Exhibit 38 is a true and correct copy of an invoice from Steno dated October 28, 2022 in the amount of \$1,527.50 for the transcript and video for the October 12, 2022 deposition of Richard Dawson.

40. Attached hereto as Exhibit 39 is a true and correct copy of an invoice from Esquire Deposition Solutions dated February 28, 2022 in the amount of \$462.25 for the transcript and exhibits for the August 5, 2016 deposition of Eric Wenzel in *National Steel Car Ltd. v. FreightCar America, Inc.*, Case No. 15-CV-3418 (N.D. Ill.) (hereinafter “the FCA Litigation”).

41. Attached hereto as Exhibit 40 is a true and correct copy of an invoice from Esquire Deposition Solutions dated May 25, 2022 in the amount of \$215.00 for the video for the August 5, 2016 deposition of Eric Wenzel in the FCA Litigation.

42. Attached hereto as Exhibit 41 is a true and correct copy of an invoice from Esquire Deposition Solutions dated May 3, 2022 in the amount of \$235.00 for the video for the February 23, 2016 deposition of Hugh Nicholson in the FCA Litigation.

43. Attached hereto as Exhibit 42 is a true and correct copy of an invoice from Esquire Deposition Solutions dated May 3, 2022 in the amount of \$200.00 for the video for the July 15, 2016 deposition of Hugh Nicholson in the FCA Litigation.

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44. Attached hereto as Exhibit 43 is a true and correct copy of an invoice from Esquire Deposition Solutions dated May 3, 2022 in the amount of \$305.00 for the video for the September 13, 2016 deposition of Hugh Nicholson in the FCA Litigation.

45. Attached hereto as Exhibit 44 is a true and correct copy of an invoice from Esquire Deposition Solutions dated May 3, 2022 in the amount of \$235.00 for the video for the February 24, 2016 deposition of Jamal Hematian in the FCA Litigation.

46. Attached hereto as Exhibit 45 is a true and correct copy of an invoice from Esquire Deposition Solutions dated May 3, 2022 in the amount of \$235.00 for the video for the July 11, 2016 deposition of Jamal Hematian in the FCA Litigation.

47. Attached hereto as Exhibit 46 is a true and correct copy of an invoice from Esquire Deposition Solutions dated May 3, 2022 in the amount of \$235.00 for the video for the February 25, 2016 deposition of James Forbes in the FCA Litigation.

48. Attached hereto as Exhibit 47 is a true and correct copy of an invoice from Esquire Deposition Solutions dated May 3, 2022 in the amount of \$305.00 for the video for the July 12, 2016 deposition of Mohammed Al-Kaabi in the FCA Litigation.

49. Attached hereto as Exhibit 48 is a true and correct copy of an invoice from Esquire Deposition Solutions dated May 3, 2022 in the amount of \$235.00 for the video for the July 14, 2016 deposition of Robert Pickel in the FCA Litigation.

50. Attached hereto as Exhibit 49 is a true and correct copy of an invoice from Esquire Deposition Solutions dated May 3, 2022 in the amount of \$235.00 for the video for the July 13, 2016 deposition of Tomasz Bis in the FCA Litigation.

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51. Attached hereto as Exhibit 50 is a true and correct copy of an invoice from Weno Process LLC dated September 12, 2021 in the amount of \$137.00 for service of a subpoena on Railinc Corp.

52. Attached hereto as Exhibit 51 is a true and correct copy of an invoice from It's Your Serve dated March 17, 2022 in the amount of \$235.00 for service of a subpoena on Commercial Metals Company c/o CT Corporation.

53. Attached hereto as Exhibit 52 is a true and correct copy of an invoice from It's Your Serve dated March 22, 2022 in the amount of \$129.00 for service of a subpoena on FreightCar America, Inc.

54. Attached hereto as Exhibit 53 is a true and correct copy of an invoice from It's Your Serve dated January 5, 2022 in the amount of \$129.00 for service of a subpoena on FTI Consulting, Inc.

55. Attached hereto as Exhibit 54 is a true and correct copy of an invoice from ATG LegalServe dated June 9, 2021 in the amount of \$95.00 for service of a subpoena on FreightCar America, Inc.

56. Attached hereto as Exhibit 55 is a true and correct copy of an invoice from We Serve Law dated March 30, 2022 in the amount of \$480.00 for service of subpoenas on James Christie. Greenbrier is not seeking the \$50.00 cost for the witness fee listed on Exhibit 55 because this nonparty was not deposed.

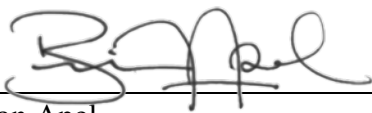
57. Attached hereto as Exhibit 56 is a true and correct copy of an invoice from We Serve Law dated March 30, 2022 in the amount of \$480.00 for service of subpoenas on New York

New Jersey Rail LLC. Greenbrier is not seeking the \$50.00 cost for the witness fee listed on Exhibit 56 because this nonparty was not deposed.

58. Attached hereto as Exhibit 57 is a true and correct copy of an invoice from We Serve Law dated April 1, 2022 in the amount of \$395.00 for service of subpoenas on New York New Jersey Rail, LLC.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of January 2024.



Brian Apel

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